be entirely independent of the service she renders to her family. She may be engaged in a separate and independent business at the same time that she is performing her family duties. In such cases it seems that the damages she may recover for an injury that impairs her ability to engage in such business are personal, and that the husband has no interest in them. *Tuttle* v. *R. R.*, 42 Iowa 518; *Filer* v. *N. Y. C. R. R.*, 49 N. Y. 47. The fact that in most cases a woman's services to her family are measured by her capacity to do labor, and the resulting difficulty experienced in separating one from the other prevents the distinction from always being clear.

PERCOLATING WATERS—RIGHT OF CITY TO DIVERT—DAMAGES TO OWNER OF ADJACENT LANDS—FORBELL V. CITY OF NEW YORK, 61 N. Y. Sup. 1005.—The city, by means of an extensive system of porous underground conduits connected with a powerful pumping station collected the percolating waters of an area of several square miles. This land was bought by the city and used for this purpose only, and no improvement was made upon it, nor was any intended. The direct result was to lower the water level of the plaintiff's and other lands, and destroy the crops growing, or which might have been grown upon them. *Held*, the city was liable for the damages thus sustained.

The case is an extension of the doctrine laid down in *Smith* v. *The City of Brooklyn*, 54 N. E. 787; 9 *Yale Law Journal* 94. The facts are the same, but here the plaintiff is allowed to recover, not for the loss of the enjoyment of a running stream fed by these percolations, but directly for the loss of the percolating waters resulting in the failure of his crops. There his rights as riparian owner were involved, here only his rights as proprietor of the land. On principle the case is directly contrary to *Chaseman* v. *Richards*, 7 H. L. 349, and *Bradford* v. *Pickles*, 1895 App. Cases 587, though the facts were not so strong in the English cases.

RAILROADS—INJURY AT CROSSING—CONTRIBUTORY NEGLIGENCE—GILBERT V. ERIE R. Co., 97 Fed. 747.—Plaintiff's deceased drove upon a railroad crossing in a covered buggy. At 135 feet from said crossing he saw the approaching train, but drove upon the crossing and was killed. *Held*, the rule that plaintiff's contributory negligence is counteracted by defendant's knowledge of plaintiff's danger and neglect to take reasonable care to avoid injury to plaintiff does not apply where the negligence of plaintiff and defendant is concurrent.

As soon as contributory negligence became a common defence, limitations upon the doctrine began to be developed. One of these limitations is that which is recognized by the Supreme Court in *Railway Co.* v. *Ives*, 144 U. S. 408, and enunciated in *Davies* v. *Mann*, 10 Mees. & W. 546, "that contributory negligence of the party injured will not defeat the action if it be shown that the defendant might by the exercise of reasonable care have avoided the consequences of injured parties' negligence." This supposes an unequal amount of negligence on one side or the other. Where the negligence of both parties is equal, the rule does not apply, and the case becomes one governed by the usual rules in regard to contributory negligence. The present case places a natural and necessary limitation upon *Railway Co.* v. *Ives*.

RAILROADS—INJURY TO EMPLOYEE—POTTER V. DETROIT, G. H., & M. RY. Co., 81 N. W. 80 (Mich.).—A brakeman climbing upon the ladder on the side of a moving freight car, was struck and injured by a telegraph pole located near the track. *Held*, in an action to recover damages for the injury, that, though the plaintiff had many times before passed by this pole, it was a question for the jury as to whether he was chargeable with knowledge of the danger.

This decision rests upon the ground that the plaintiff, having previously passed the pole, either on foot or on the top of a freight car, the danger of being struck might not have been so obvious to him from such point of view as to charge him with knowledge of it. One justice dissents, and says: "This, and like cases that may be found in the reports, we think cannot be sustained upon principle and leave anything of the rule of assumed risks." Cf. Bailey, Mast. Liab., p. 80. "When the location is ascertained the danger is manifest; it being the law and the contract that the servant ought to know that which was plain to be seen, and which it was a part of his duty to learn and know."

SCHOOLS—DISCRIMINATION BETWEEN COLORED CHILDREN—RIGHTS UNDER THE CONSTITUTION—ELIZABETH CISCO V. SCHOOL BOARD OF THE BOROUGH OF QUEENS, NEW YORK CITY—Decided New York Court of Appeals, February 6, 1900.—Where separate schools of equal accommodations are provided for white and colored children, a refusal to grant admission to colored children to the schools maintained for white pupils does not violate any of the rights guaranteed by the Constitution. See Comment.

SCHOOLS—DISCRIMINATION AGAINST COLORED CHILDREN — RIGHTS UNDER THE FOURTEENTH AMENDMENT—J. W. CUMMINGS ET AL. V. COUNTY BOARD OF EDUCATION OF RICHMOND COUNTY, STATE OF GEORGIA.—A temporary suspension of a high school for colored children, in order that the funds used in its support might be diverted towards the education of children of the same race in the primary schools, is no ground for the granting of an injunction restraining the Board of Education from using certain funds for the maintenance of a high school for white children. See Comment.

STREET RAILWAYS—INJURIES TO PASSENGER—CONTRIBUTORY NEGLIGENCE—WISE V. BROOKLYN HEIGHTS R. CO., 61 N. Y. Sup. 530.—Plaintiff alighted at night from a street car at a station in the suburbs of a city, and on starting to cross a parallel track was struck and injured by a car running at high speed, on a down grade, in the opposite direction. The car from which plaintiff alighted obstructed the view of the approaching car, which at the time was from 800 to 1200 feet distant. *Held*, that the question of his negligence should have been allowed to go to the jury, and not decided to be contributory negligence per se by the court; first, because by reason of the darkness and existing obscurities, plaintiff might not, in the exercise of prudence, have determined that the car was too close to render it dangerous to attempt to cross the track, and, secondly, because, since a street railway company is not justified in running its cars at high speed past a car standing on a parallel track to allow passengers to alight, who might cross to either side of the street, its act in so doing, rendering the place appointed for passengers to alight dangerous, is an act of negligence tending to excuse plaintiff's failure to observe the approaching car.

To constitute contributory negligence, an act must be the proximate cause of the injury, and also show lack of care on the plaintiff's part. The New York rule in *Landrigan* v. *R. R.*, 23 App. Div. 43, holds failure to observe the approach of a car on a parallel track, under circumstances somewhat similar to the present case, contributory negligence per se, but the present case is distinguished because the darkness might have made the failure to see the car not inconsistent with the exercise of due care, and also because, the accident having happened at a station where passengers were being discharged, the company was guilty of negligence in not slackening the speed of the car that struck plaintiff. This may have been the proxi-